

Department of Defense

225.603

clause at FAR 52.225-21, Buy American Act—North American Free Trade Agreement Implementation Act—Balance of Payments Program. The clause need not be used where purchase from foreign sources is restricted (see 225.403(d)(1)(B)). The clause may be used where the contracting officer anticipates a waiver of the restriction.

(B)(i) Use the clause in all solicitations and contracts for the items listed at 225.403-70, when the estimated value is \$50,000 or more and the Trade Agreements Act does not apply. Include the clause in solicitations for multiple line items if any line item is subject to NAFTA.

(ii) Use the clause with its Alternate I when the estimated value is between \$25,000 and \$50,000.

(C) Application of the procedures in 225.402(a) and the acquisition of non-eligible and eligible products under the same solicitation may result in the application of the North American Free Trade Agreement Implementation Act to only some of the items solicited. In such case, indicate in the schedule those items covered by the Act.

[56 FR 36367, July 31, 1991, as amended at 57 FR 42630, Sept. 15, 1992. Redesignated and amended at 59 FR 1289, Jan. 10, 1994; 60 FR 29498, June 5, 1995; 61 FR 16880, Apr. 18, 1996]

Subpart 225.6—Customs and Duties

225.602 Policy.

(1) Section XXII, chapter 98, subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States authorizes duty-free importation of defense supplies.

(2) 19 U.S.C. 1309 authorizes duty-free importation of certain supplies (not including equipment) for vessels or aircraft operated by the United States (see FAR 25.604(b)).

(3) DoD will issue duty-free entry certificates for—

(i) Qualifying country supplies (end products and components) on all defense contracts;

(ii) Eligible products (end products but not components) on defense contracts subject to the Trade Agreements Act or NAFTA; and

(iii) Other foreign supplies, if there is reasonable assurance that the adminis-

trative and other costs of processing and controlling the certificates will not exceed the amount of duty that would be paid.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1290, Jan. 10, 1994]

225.603 Procedures.

(1) Issue duty-free entry certificates—

(i) In accordance with the policy in 225.602;

(ii) On contracts containing the clauses in—

(A) FAR 52.225-10, Duty-Free Entry; or

(B) 252.225-7009, Duty-Free Entry—Qualifying Country End Products and Supplies; or

(C) 252.225-7037, Duty-Free Entry—NAFTA Country End Products and Supplies; or

(iii) On other contracts that fall within one of the following categories—

(A) Direct purchases of foreign supplies under a DoD prime contract, whether title passes at point of origin or at destination in the United States; provided, the contract states that the final price is exclusive of duty;

(B) Purchases of foreign supplies by a domestic prime contractor under a cost-reimbursement type contract or by a cost-reimbursement type subcontractor (where no fixed-price prime or fixed-price subcontract intervenes between the purchaser and the Government), whether title passes at point of origin or at destination in the United States. If a fixed-price prime or fixed-price subcontract intervenes, follow the criteria stated in paragraph (1)(iii)(C) of this section; or

(C) Purchases of foreign supplies by a fixed-price domestic prime contractor, a fixed-price subcontractor, or a cost-type subcontractor where a fixed-price prime contract, or fixed-price subcontract intervenes; provided—

(1) The fixed-price prime contract and, where applicable, fixed-price subcontract prices are, or are amended to be, exclusive of duty;

(2) The supplies so purchased will be delivered to the Government or incorporated in Government-owned property or in an end product to be furnished to the Government, and the duty will be

paid if such supplies or any portion are used for other than the performance of the Government contract or disposed of other than for the benefit of the Government in accordance with the contract terms; and

(3) Such acquisition abroad is authorized by the terms of the contract, the subcontract, or by the contracting officer. In any case, follow the procedures required by the clauses in FAR 52.225-10, Duty-Free Entry, and 252.225-7009, Duty-Free Entry—Qualifying Country End Products and Supplies, and 252.225-7037, Duty-Free Entry—NAFTA Country End Products and Supplies, to the extent practicable.

(2) Do not issue duty-free entry certificates or exempt duty for end products, components, or supplies already entered into the customs territory of the United States for which duty has already been paid.

(3) If a duty-free entry certificate is issued a contractor under a fixed-price contract based on the contractor's providing a domestic or qualifying country end product, component, or supply, negotiate an equitable reduction in the contract price if the contractor subsequently furnishes a nonqualifying country end product, component, or supply.

(4) Exclude duty from the contract price for end products, components, or supplies that are being accorded duty-free entry.

(5) Except as required under the evaluation procedures in 225.105 for the Buy American Act, do not evaluate duty for items accorded duty-free entry.

(6) Even if duty is evaluated under Subpart 225.1, the supplies may still be authorized duty-free entry if to do so is consistent with the policies in 225.602. However, if the Government will pay a duty, then the cost of the duty must be included in the contract price and evaluated as part of the offer.

(b) *Formal entry and release.* (i) The administrative contracting officer must—

(A) Ensure that prime contractors are aware of and understand any Duty-Free Entry clause requirements. Contractors should understand that failure by them or their subcontractors to include the data required by the clause will result in treatment of the ship-

ment as without benefit of free entry under section XXII, chapter 98, subchapter VIII, Item 9808.00.30 of the Harmonized Tariff Schedule of the United States.

(B) Upon receipt of the required notice of purchase of foreign supplies from the contractor or any tier subcontractor—

(1) Verify the duty-free entitlement of goods entering under the contract; and

(2) Review the prime contract to ensure that performance of the contract requires the foreign supplies (quantity and price) identified in the notice.

(C) Upon receipt of notification from the contractor that it is placing a foreign purchase that was not identified at the time of contract award—

(1) Determine whether a reduction in the contract price is required under the clause at FAR 52.225-10, Duty-Free Entry;

(2) If so, make an equitable adjustment in the contract price, unless the procuring contracting officer waives this adjustment;

(3) Determine the price of the foreign supplies exclusive of duty, and advise the contractor that that amount will be the maximum dollar value of supplies for which duty-free entry certificates will be issued.

(D) Within 20 days after receiving the notification of purchase of foreign supplies, forward the following information in the format indicated to the Commander, DCMAO New York, ATTN Customs Team, DCMDN-GNIC, 207 New York Avenue, Staten Island, NY 10305-5013—

We have received a contractor notification of the purchase of foreign supplies. I have verified that foreign supplies are required for the performance of the contract. If required, the prime contract price has been or will be adjusted.

Prime Contractor Name and Address:

Prime Contractor CAGE Code:

Prime Contract Number plus Delivery Order Number, if applicable:

Total Dollar Value of the Prime Contract or Delivery Order:

Expiration Date of the Prime Contract or Delivery Order:

Foreign Supplier Name and Address:

Number of Subcontract/Purchase Order for Foreign Supplies:

Total Dollar Value of the Subcontract for Foreign Supplies:

Department of Defense

225.605-70

Expiration Date of the Subcontract for Foreign Supplies:

CAO Activity Address Number:

ACO Name and Telephone Number:

ACO Code:

Signature:

Title:

(E) If a contract modification results in a change to any data verifying duty-free entitlement previously furnished, forward a revised notification including the changed data to DCMAO New York.

(ii) The responsibility for issuing duty-free entry certificates for foreign supplies purchased under a DoD contract or subcontract rests with the Customs Team, DCMDN-GNIC, DCMAO New York. Upon receipt of import documentation for incoming shipments from the contractor, its agent, or the U.S. Customs Service, DCMAO New York will verify the duty-free entitlement and execute the duty-free entry certificate.

(iii) Upon arrival of foreign supplies at ports of entry, the consignee, generally the contractor or its agent (import broker) for shipments to other than a military installation, will file U.S. Customs Form 7501, 7501A, or 7506, with the District Director of Customs.

(c) *Immediate entry and release.* Importations made in the name of a DoD military facility or being shipped directly to a military facility are entitled to release under the immediate delivery procedure.

(i) A DoD immediate delivery application has been approved and is on file at Customs Headquarters.

(ii) The application is for an indefinite period and is good for all Customs districts, areas, and ports.

[56 FR 36367, July 31, 1991, as amended at 59 FR 1290, Jan. 10, 1994; 60 FR 29498, June 5, 1995; 62 FR 2613, Jan. 17, 1997]

225.604 Exempted supplies.

(b)(i) The term "supplies"—

(A) Includes articles known as "stores," such as food, medicines, and toiletries, as well as all consumable articles necessary and appropriate for the propulsion, operation, and maintenance of the vessel or aircraft, such as fuel, oil, gasoline, grease, paint, cleansing compounds, solvents, wiping rags, and polishes.

(B) Does not include portable articles necessary and appropriate for the navigation,

operation, or maintenance of vessel or aircraft and for the comfort and safety of the persons on board, such as rope, bolts and nuts, bedding, china and cutlery, which are included in the term "equipment."

(ii) The duty-free certificate shall be printed, stamped, or typed on the face of Customs Form 7501, or attached, and shall be executed by a duly designated officer or civilian official of the appropriate department or agency in the following form—

(Date) _____

I certify that the acquisition of this material constituted a purchase of supplies by the United States for vessels or aircraft operated by the United States, and is admissible free of duty pursuant to 19 U.S.C. 1309.

(Name) _____

(Title) _____

(Organization) _____

225.605 Contract clause.

(b) The dollar amount in paragraphs (b)(1) and (i)(2) of the FAR 52.225-10 clause may be reduced appropriately in solicitations and contracts of \$100,000 or less.

225.605-70 Additional solicitation provisions and contract clauses.

(a) Use the clause at 252.225-7008, Supplies to be Accorded Duty-Free Entry, in all solicitations and contracts when—

(1) Duty-free entry will be granted under the resultant contract; and

(2) The solicitation and contract include the clauses at—

(i) FAR 52.225-10, Duty-Free Entry; or

(ii) 252.225-7009, Duty-Free Entry—Qualifying Country End Products and Supplies.

(b) Use the clause at 252.225-7009, Duty-Free Entry—Qualifying Country End Products and Supplies, in all solicitations and contracts for supplies and in all solicitations and contracts for services involving the furnishing of supplies. Do not use the clause in a contract for supplies for exclusive use outside the United States.

(c) Use the clause at 252.225-7037, Duty-Free Entry—NAFTA Country End Products and Supplies, in all solicitations and contracts for supplies and services when the clause at FAR 52.225-10, Duty-Free Entry, is not used and NAFTA applies (see 225.403-70).

(d) Use the clause at